

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Cody	Team: Team # 6	CCRB Case #: 200713836	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/16/2007 1:15 AM	Location of Incident: East 228th Street and White Plains Road	Precinct: 47	18 Mo. SOL 2/16/2009	EO SOL 2/16/2009	
Date/Time CV Reported Sat, 09/22/2007 11:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 09/22/2007 11:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Daniel Acosta	11677	924863	PBBX TF
3. POM Brian Brannigan	30685	927956	PBBX AC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Dominick Triolo	04810	905187	PBBX TF
2. DTS Robert Mancini	01263	910158	ESS 03
3. POM Serge Juste	11865	925753	PBBX TF
4. POM David Egan	28873	936545	PBBX TF
5. POM Erik Green	27395	936697	PBBX TF
6. POM Brian Williams	09986	926382	PBBX TF
7. POM Gabriel Cotto	30799	928119	PBBX TF
8. POM James Whitlock	08687	932226	PBBX AC
9. SGT Robert Barnett	00157	918730	PBBX AC
10. POM Errico Agosta	05515	896182	PBBX TF
11. CPT Stewart Lieber	00000	912458	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Acosta	Force: At East 228th Street and White Plains Road in the Bronx, PO Daniel Acosta fired his gun at § 87(2)(b)	
B. Officers	Force: At East 233rd Street and Bronx River Parkway North in the Bronx, officers pointed their guns at § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C. Officers	Discourtesy: At East 233rd Street and Bronx River Parkway North in the Bronx, officers spoke obscenely to § 87(2)(b)	
D.POM Brian Brannigan	Force: At East 233rd Street and Bronx River Parkway North in the Bronx, PO Brian Brannigan used physical force against § 87(2)(b)	
E. Officers	Force: At East 233rd Street and Bronx River Parkway North in the Bronx, officers used physical force against § 87(2)(b)	

Synopsis

On September 22, 2007, § 87(2)(b) filed this complaint with the CCRB via phone on behalf of his brother, § 87(2)(b). On August 16, 2007, at approximately 1:15am, § 87(2)(b) parked his vehicle in the vicinity of East 228th Street and White Plains Road in the Bronx. Also inside the vehicle were § 87(2)(b)'s friends § 87(2)(b) and § 87(2)(b). § 87(2)(b) exited the vehicle to buy some snacks from a convenience store on the corner while § 87(2)(b) prepared to smoke some marijuana. At that time, Officer Daniel Acosta approached the vehicle and attempted to grab the marijuana in § 87(2)(b)'s possession. § 87(2)(b) alleged that he did not know it was an officer and thought he was being robbed. § 87(2)(b) tugged back on the marijuana. Officer Acosta pointed his gun at § 87(2)(b). § 87(2)(b) said to Officer Acosta, "You going to shoot me over this?" Officer Acosta then fired a round from his department-issued 9mm handgun striking § 87(2)(b)'s left thigh (Allegation A). § 87(2)(b) began driving away from the scene but grew dizzy from blood loss. § 87(2)(b) and § 87(2)(b) switched seats and § 87(2)(b) drove until he was pulled over by an unmarked vehicle which contained an Anti-Crime team consisting of Officer Brian Brannigan, Officer James Whitlock and Sergeant Robert Barnett, at East 233rd Street and the Bronx River Parkway. Officers allegedly pointed their guns at § 87(2)(b) and § 87(2)(b) (Allegation B). § 87(2)(b) alleged that an unidentified officer stated, "Stop the fucking car or I'll shoot" (Allegations C). § 87(2)(b) alleged that he was pulled out of the vehicle by Officer Brannigan and Officer Cotto, and kicked numerous times all about his body (Allegations D and E). § 87(2)(b) alleged his shoulder was dislocated. § 87(2)(b) was treated for a gunshot wound at § 87(2)(b) and § 87(2)(b) was treated at § 87(2)(b). Both individuals were charged with § 87(2)(b). § 87(2)(g)

On October 19, 2007, this case was placed on DA hold by the Bronx DA's office. On December 10, 2008, the hold on this case was lifted.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On August 16, 2007, Captain Stewart Lieber, of Patrol Borough Bronx, called the NYPD command center to report that Officer Daniel Acosta had been involved in a police shooting, generating IAB log 07-31234 (Enc. 15A-D). On September 22, 2007, § 87(2)(b) filed this complaint with the CCRB via phone on behalf of his brother, § 87(2)(b) (Enc. 16A-C). He stated § 87(2)(b) had been shot in the left thigh. § 87(2)(b) was not present for this incident.

On August 16, 2007, § 87(2)(b) told EMS personnel, "I got shot in my leg" and said the only thing he heard was "pop!" § 87(2)(b) also admitted to marijuana use (Enc. 40A-B). § 87(2)(b) medical records indicate that § 87(2)(b) stated that he was shot once while sitting in his car (Enc. 39A-D9). On an unknown date, § 87(2)(b) was interviewed by Detective Angelo Polite, from the Detective Bureau Night Watch (Enc. 1A-U). § 87(2)(b) made an oral statement but there is no recording of his statement. The interview report states that § 87(2)(b) "came to the location with his two cousins in his green Bonneville. He stopped at a store in the vicinity of East 228th Street and White Plains Road when the police 'rolled up on him!' Defendant § 87(2)(b) stated, 'What's up Officer' and then blow!!! The cop shot me and rode off." There is no other information provided.

On October 30, 2007, § 87(2)(b) was interviewed at § 87(2)(b) by the undersigned investigator (Enc. 18A-F). He stated that on August 16, 2007, he was driving his '96 green automatic Pontiac Bonneville four-door sedan (the shifter located on the steering column). § 87(2)(b) could not recall what he was wearing that night. Inside the vehicle were § 87(2)(b)'s cousin, § 87(2)(b).

§ 87(2)(b) and his long-time childhood friend, § 87(2)(b). Earlier that night, the three of them were at East 230th Street and Laconia Avenue in the Bronx, where they were meeting two girls, § 87(2)(b) and § 87(2)(b) (last name unknown) who live in that area. The girls were friends with § 87(2)(b) and § 87(2)(b). They were smoking a marijuana-cigar in front of one of these girl's houses at approximately 11:00pm (on August 15, 2007). They decided to travel to a bar located at Bronxwood Avenue and East 225th Street in the Bronx to meet a third girl so that there would be a girl for § 87(2)(b). However, the bar was closed and the third female was not present there. Nobody was drinking in the vehicle and nobody was drinking at any point during that night. § 87(2)(b) then drove the women back to East 230th Street and Laconia Avenue, where they were left with "their peoples" who had come over there. § 87(2)(b) had been with these women for approximately 40 minutes to an hour.

§ 87(2)(b) drove to East 228th Street and White Plains Road in the Bronx and parked on East 228th Street in front of a stop sign. Other cars were parked on the block but § 87(2)(b) did not recall observing any vehicular traffic. § 87(2)(b) did not observe any police officers or police vehicles at that time. There were a couple people on the corner but § 87(2)(b) did not know them or interact with them. § 87(2)(b) got out of the backseat of the vehicle and entered a bodega on the corner of White Plains Road while § 87(2)(b) and § 87(2)(b) stayed in the vehicle. The bodega was the only store open at that time, but there are other commercial establishments in the area. § 87(2)(b) was getting drinks and snacks for everybody and a Philly blunt in order to smoke some marijuana § 87(2)(b) had on him. The marijuana was in a Ziploc bag and was approximately four grams. § 87(2)(b) had the bag out on his lap while he waited. There was no other contraband in the car at that time, including heroin or crack.

§ 87(2)(b) was in park with the car running and his window rolled down. He had music playing but it was not loud. § 87(2)(b) was sitting in the car for approximately two to three minutes when PO1, identified via investigation as Officer Daniel Acosta, reached inside his open window with what § 87(2)(b) believed was his left hand, and grabbed § 87(2)(b)'s bag of marijuana. § 87(2)(b) did not know what direction Officer Acosta approached from. There was no one smoking at the time Officer Acosta approached. § 87(2)(b) was unaware Officer Acosta was an officer and believed he was being robbed at that point. § 87(2)(b) pulled back on the marijuana because that was his first instinct. As Officer Acosta pulled back, the top portion of the bag ripped off, leaving § 87(2)(b) with the bottom portion and the marijuana inside. Officer Acosta never said anything at any point during this incident. § 87(2)(b) could not describe Officer Acosta in any manner, but referred to him as a male. § 87(2)(b) was asked how he knew it was a male. § 87(2)(b) said it was due to the strength of Officer Acosta, which Officer Acosta exhibited when he pulled on § 87(2)(b)'s bag of marijuana. § 87(2)(b) also indicated that Officer Acosta was uniformed but said he learned that from his wife, § 87(2)(b), who visited him in the hospital weeks after this incident.

After the struggle for the bag, which lasted a few seconds, Officer Acosta reached inside the window with a pistol and pointed it towards § 87(2)(b)'s body. § 87(2)(b) did not see Officer Acosta remove his firearm from his holster. § 87(2)(b) reacted by dropping the bag of marijuana and moving his body towards the passenger seat away from the gun, repeatedly saying, "Yo, yo, yo." § 87(2)(b) said he made an effort to push away the gun with his hand at that point but said there was no contact between Officer Acosta and himself, and he never touched Officer Acosta's skin. § 87(2)(b) did not know what happened to the marijuana, whether it fell on the floor or outside the window. § 87(2)(b) said, "You going to shoot me over this?" § 87(2)(b) never looked up at Officer Acosta because the incident happened so quickly and because his focus was on the gun. Officer Acosta stepped back and fired the weapon while the gun was still inside the vehicle. The gun was slightly past § 87(2)(b)'s shoulder when it was discharged. The bullet entered § 87(2)(b)'s left thigh, slightly above the knee cap, shattering his thigh bone and exiting out the bottom of his thigh.

§ 87(2)(b) feared he would be shot again so he put the car in drive and sped down East 228th Street. § 87(2)(b) could not recall if his tires screeched. Officer Acosta's hand was outside the vehicle after § 87(2)(b) started driving. Officer Acosta fired his weapon *before* § 87(2)(b) began driving and it was not possible that he hit Officer Acosta with his vehicle. § 87(2)(b) did not hear any sounds that would have indicated Officer Acosta made contact with the vehicle. He did not know what Officer Acosta did after he fired his weapon and did not check his mirrors to see who fired the weapon. As soon as § 87(2)(b) was shot, § 87(2)(b) started saying, "Oh shit, oh shit." § 87(2)(b) did not say anything about police officers and never said Officer Acosta was a cop. § 87(2)(b) did not immediately realize he was shot because he was not in pain. Nothing was running through § 87(2)(b)'s mind about who could have shot him, only about trying to get to a hospital. However, he initially stated he did not know where the

hospital was located and could not name the hospital, but later said there was a hospital that is off the Bronx River Parkway

§ 87(2)(b) became dizzy from the gunshot wound and began swerving on the road. § 87(2)(b) drove down a hill from East 228th Street and made a right turn. He then pulled over and shifted to the passenger seat while § 87(2)(b) got out and got into the driver's seat. As they drove two unmarked vehicles with flashing lights in the dashboards drove in front of their car and cut them off on East 233rd Street and Bronx River Parkway. From the point § 87(2)(b) was shot until the point his car was stopped was about five to eight minutes. Plainclothes officers exited the vehicles with their guns drawn, yelling, "Get out of the car," repeatedly. § 87(2)(b) opened his car door and told the officers he had been shot. The officers, which § 87(2)(b) could not describe other than white males, grabbed him and dragged him on to the ground on his side. They then placed him chest-first on the ground and applied handcuffs. The officers asked him his name, which he provided. He then began going in and out of consciousness. § 87(2)(b) was lying on the ground until an ambulance arrived, but lost consciousness before the ambulance arrived. § 87(2)(b) did not know what happened to § 87(2)(b) because he was too concerned with his own self at that point.

§ 87(2)(b) went into a coma and woke up six to seven weeks later inside § 87(2)(b). § 87(2)(b) had three different surgeries as a result of his gun shot wound. § 87(2)(b) said he almost died three different times and his kidney's failed him. Because his thigh bone was shattered, it was replaced with a steel rod. The undersigned investigator observed that § 87(2)(b) had two large surgical scars, one on his left knee cap and the other running along the length of his left thigh area. The gunshot wound was above his left knee cap. § 87(2)(b) did not sustain any other injuries besides the gun shot. There was another surgical scar on the inner portion of his right thigh. § 87(2)(b)'s right thigh vein was removed and transplanted into his left thigh because his left leg was rejecting his vein. § 87(2)(b) has been told that he will walk again but has suffered nerve damage and cannot move his foot. § 87(2)(b) was on a painkiller that is stronger than morphine, but he could not recall its name. He has been taking that medication regularly.

The first time § 87(2)(b) found out Officer Acosta was an officer was when he woke up from his coma and the police came to fingerprint him. § 87(2)(b) asked what he was being charged with. The officer told him that he would tell him after he finished fingerprinting him. The officer then told him he was charged with § 87(2)(b). § 87(2)(b) said he did not know why that was the case. The officer told § 87(2)(b) that he should because he dragged an officer 20 to 30 feet. § 87(2)(b) asked him a "million and one" questions but the officer would not tell him any more information. § 87(2)(b) does not know the name of the officer who shot him. § 87(2)(b)'s criminal attorney is § 87(2)(b). When § 87(2)(b) was being arraigned, § 87(2)(b) told § 87(2)(b) he was being charged with § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) visited § 87(2)(b) at § 87(2)(b). § 87(2)(b) spoke with § 87(2)(b) about the whole incident because it was a crazy experience. § 87(2)(b) said that when he went to court, the officer who fired his weapon testified that he shot through the door of the car and did not reach into the window, resulting in the shattering of glass. § 87(2)(b) told § 87(2)(b) that he was headed out of the store when he heard gun fire, at which point he saw § 87(2)(b) driving away. § 87(2)(b) told § 87(2)(b) he observed Officer Acosta chasing after the vehicle.

Results of Investigation

§ 87(2)(b)

On August 16, 2007, § 87(2)(b) provided a handwritten statement to Det. William Fisher of the 49th Precinct Detective Squad (Enc. 20A-C). § 87(2)(g)

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) where he complained of severe mid-back and right shoulder pain (Enc. 42A-O). § 87(2)(b) stated he was assaulted by the police but was unable to provide details as to what he was hit with, who hit him or how many times he was hit.

On November 14, 2007, § 87(2)(b) was interviewed over the phone (Enc. 21A). On December 6, 2007, § 87(2)(b) was interviewed at his home at § 87(2)(b) (Enc. 22A-E).

§ 87(2)(g) He is a black male, 6'3", 168-pounds with black hair and brown eyes. On August 15, 2007, § 87(2)(b) was helping his uncle § 87(2)(b) do work on his house. At approximately 11:00pm, § 87(2)(b) got off of work and met with § 87(2)(b) his cousin and friend since childhood. Also present a close friend, § 87(2)(b) § 87(2)(b) had been

working all day and was tired. § 87(2)(b) suggested they travel to the Bronx and meet up with some women. In addition, they also had plans to smoke some marijuana that § 87(2)(b) and § 87(2)(b) possessed. All together, they had about six grams of marijuana between them. They all got into § 87(2)(b)'s vehicle, a green Pontiac, and traveled to meet these women. § 87(2)(b) did not know the names of these women or where they lived, since he was unfamiliar with the area because he is from § 87(2)(b). § 87(2)(b) fell asleep in the passenger seat while § 87(2)(b) drove. § 87(2)(b) was in the backseat of the vehicle.

Once they arrived, § 87(2)(b) left the vehicle to go meet the girls, but § 87(2)(b) stayed in the vehicle and continued sleeping. § 87(2)(b) believed § 87(2)(b) stayed in the vehicle with him. § 87(2)(b) did not know why they never ended up hanging out with these girls and it is possible the women were not home. § 87(2)(b) got back into the vehicle and asked § 87(2)(b) if he wanted anything from the store. § 87(2)(b) indicated he needed cigarettes and a Pepsi. They had not smoked any marijuana that night and had not had anything to drink. They never went to any bars either.

§ 87(2)(b)'s testimony concerning § 87(2)(b) parking on the corner of East 228th Street and White Plains Road was consistent with § 87(2)(b)'s testimony. Once parked, § 87(2)(b) got out of the vehicle to get a "whiteout" (a cigar) from a bodega located on the corner of White Plains Road so they could smoke the marijuana they had. Inside the vehicle, § 87(2)(b) gave § 87(2)(b) a piece of marijuana to roll from § 87(2)(b)'s plastic bag. As § 87(2)(b) handed § 87(2)(b) a bud of marijuana, § 87(2)(b) observed PO1, identified as Officer Acosta, approaching on foot from around the corner of White Plains Road to the left of them. § 87(2)(b) said, "Oh shit, the police." § 87(2)(b) never indicated that he observed Officer Acosta holding a firearm at that time. § 87(2)(b) believed Officer Acosta observed the marijuana they were holding. From the moment § 87(2)(b) pointed out Officer Acosta was approaching to the moment he arrived at the vehicle was nearly instantaneous. § 87(2)(b) clenched the marijuana in his hand and placed his hands on the steering wheel of the vehicle in an attempt to conceal the marijuana. Officer Acosta, a uniformed Hispanic male, brown-skin, 5'11", reached into the window and grabbed § 87(2)(b)'s left hand, saying, "Give me what you got in your hand" and demanded he open his hand.

At the same time Officer Acosta reached inside the vehicle to grab § 87(2)(b)'s hand, he also reached into the vehicle with his other free hand holding a firearm, placing the barrel on § 87(2)(b)'s left thigh right above the kneecap. § 87(2)(b) was half-asleep and "dazed out" at that time. § 87(2)(b) said Officer Acosta did not come to the car like an officer but more like a "stick-up kid." § 87(2)(b) immediately said, "You gonna shoot me for this? This little bit of weed, you gonna shoot me for weed?" Officer Acosta then discharged his weapon into § 87(2)(b)'s left thigh. In § 87(2)(b)'s statement to the police, he said that § 87(2)(b) grabbed the gear shift on the steering wheel when the officer fired his gun. Immediately after firing his weapon, Officer Acosta stepped back and removed his arms from the vehicle. § 87(2)(b) said Officer Acosta "looked" like he was about to cock the gun and shoot it again. § 87(2)(b) is scared of guns because he has been shot in the stomach before, and after the first shot was fired, he was "basically on the floor." § 87(2)(b) yelled, "Oh shit, he shot me." § 87(2)(b) put the car in drive and began driving down East 228th Street, going approximately 30 miles per hour, and there was no screeching of the tires. § 87(2)(b) corroborated § 87(2)(b)'s testimony concerning § 87(2)(b)'s denial that they hit Officer Acosta with their vehicle. § 87(2)(b) added that when he looked back he observed Officer Acosta running towards their vehicle. Officer Acosta had his hat in one hand and the gun in his other hand (when Officer Acosta first approached, he had his hat on his head). Officer Acosta's arms were outside the car when they started driving. § 87(2)(b) did not hear anything strike the vehicle.

As § 87(2)(b) drove, he began getting dizzy and almost hit some parked cars on the side of the road. § 87(2)(b) drove down a hill approximately a block away and stopped the car. § 87(2)(b) pulled him over to the passenger seat. § 87(2)(b) pulled into the driver's seat and began driving to a hospital near § 87(2)(b). § 87(2)(b) knew where the hospital was because § 87(2)(b). From the point § 87(2)(b) was shot until the point he was pulled over was two to three minutes.

§ 87(2)(b) did not know where the marijuana was as they drove away and they never tried to get rid of it or any other narcotics by throwing them out their windows. § 87(2)(b) did not believe that Officer Acosta ever managed to grab the marijuana. § 87(2)(b) continued driving until he reached East 225th Street and Bronx River Parkway. § 87(2)(b) was first stopped by a black unmarked car and a blue Caprice as he approached Bronx River Parkway and 225th Street. The car looked like it had been waiting for them and had been sitting on the side of the road when the Caprice drove out to cut § 87(2)(b) off. It

looked like the car was about to strike them, so § 87(2)(b) swerved away from the car and then stopped his vehicle. The police car did not touch their vehicle. Two officers from that vehicle, PO2 and PO3, yelled, "Stop the fucking car or we'll shoot," "put your hands up," and "turn the car off." They had their guns drawn and pointed at § 87(2)(b) and § 87(2)(b). Immediately after, a large marked van pulled up behind them and blocked them in.

PO4, a Puerto Rican male, 5'5"-5'6", slightly unshaven, stocky build, plainclothes officer, approached the vehicle first (he was the driver of the Caprice). PO3 had his gun pointed, saying, "Stop the fucking car or I'll shoot." § 87(2)(b) only recalled his face and Officer Acosta's. They opened the door and an officer grabbed § 87(2)(b)'s arm and pulled him out of the car on to his chest. The officers never asked him to get out of the vehicle. § 87(2)(b) did not observe § 87(2)(b) removed from the vehicle. § 87(2)(b) was not doing anything with his body other than lying on the floor. § 87(2)(b) was kicked approximately ten times, primarily in his upper-shoulder area and on his arms. § 87(2)(b)'s right shoulder was damaged from these kicks and his arm was "out of its socket." § 87(2)(b) was kicked for three to four minutes before he was finally handcuffed on the ground. He did not know which officers kicked him. § 87(2)(b) made no mention of any force used on him in his initial written statement to Det. Fisher other than that he was pulled out of the vehicle. § 87(2)(b) was picked up and placed in the black unmarked car and observed § 87(2)(b) still lying on the ground. An ambulance arrived and § 87(2)(b) was placed in the ambulance.

§ 87(2)(b) was transported to the precinct. Once there, detectives began questioning him about what had taken place. § 87(2)(b) went to a hospital approximately nine hours later, likely the following day, but he did not know which hospital he went to. § 87(2)(b) was treated for a dislocated shoulder. Besides the dislocated shoulder he did not suffer any other injury. § 87(2)(b)

§ 87(2)(b)

Witness: § 87(2)(b)

On March 13, 2008, § 87(2)(b) was interviewed at the CCRB (Enc. 23A-D). He stated that on August 16, 2007, at approximately 1:15am, in the vicinity of East 228th Street and Bronx River Parkway in the Bronx, he was coming from a friend's house at the corner of East 228th Street. § 87(2)(b) works at a § 87(2)(b) with § 87(2)(b)'s wife. When § 87(2)(b) got off from work at 4:00pm, he met § 87(2)(b) and § 87(2)(b) who are both his friends. § 87(2)(b) said they are like family, and he grew up with § 87(2)(b). § 87(2)(b)'s car is a green Pontiac Bonneville with four-doors and tan seats. § 87(2)(b) was wearing a black hat, a hoodie, jeans and work boots. § 87(2)(b) went to § 87(2)(b)'s house, which is about a block away from where he lives on that night. They were going to hang out at a friend's house in Yonkers but they only stopped by and did not go inside. § 87(2)(b) did not know where this house was. They then traveled down to the Bronx. § 87(2)(b) was driving and § 87(2)(b) was in the passenger seat. They were just riding around when they decided to stop and get some food. § 87(2)(b) said he was going to buy four Sprites and Newport cigarettes.

§ 87(2)(b) said they parked their vehicle near a fire hydrant on the corner of White Plains Road. There are elevated train tracks nearby and drycleaners in the area. There was no traffic in the street. There may have been some people in the area, but § 87(2)(b) did not observe many. § 87(2)(b) got out of the vehicle to purchase snacks at a deli on the corner of White Plains Road and East 228th Street. § 87(2)(b) walked towards the deli which had a plexi-glass window where he had to slide his cash through. § 87(2)(b) was standing 10-20 feet away from the store when he heard a gunshot. He later said he was already at the store and in the middle of purchasing items from the store when he heard this gunshot. § 87(2)(b) appeared confused during his CCRB interview as to when this shot was fired. After the shot, § 87(2)(b) heard § 87(2)(b) yell, "Oh shit." § 87(2)(b) was asked if he heard the shot before or after he purchased these items from the deli. He said he was likely in the middle of purchasing items. § 87(2)(b) could see the tip of § 87(2)(b)'s car from where he was standing but could not see the driver side door. Less than two seconds after the gunshot went off § 87(2)(b) saw § 87(2)(b) drive his car away, likely screeching its tires.

§ 87(2)(b) saw PO1, white male, 5'9", medium build, could not recall hair color but he was in uniform, identified as Officer Daniel Acosta, running after § 87(2)(b)'s vehicle. Officer Acosta had his gun in one hand and his hat in the other hand but could not recall which hand had the gun. He then said maybe it was not the officer's hat he was holding but a radio. The officer was not yelling anything, but then § 87(2)(b) said he may have been talking on his radio. Immediately after Officer Acosta ran past the

intersection, multiple marked vehicles, a car, a van and then another car, drove slowly past § 87(2)(b). The vehicle had lights on but no sirens. § 87(2)(b) never said anything to Officer Acosta. § 87(2)(b) never heard anyone say, "Police." § 87(2)(b) did not know what happened to Officer Acosta after he ran past the intersection, since his attention was directed to the police vehicles driving past. § 87(2)(b) added that Officer Acosta was not dragged. § 87(2)(b) was asked why he stated the officer was not dragged and § 87(2)(b) stated that when he returned home, he read online and in the newspapers that the officer was allegedly dragged. He never saw the officer on the ground and never saw Officer Acosta hit by the car.

§ 87(2)(b) then ran towards where § 87(2)(b) was eventually stopped, identified as East 233rd Street and Bronx River Parkway. § 87(2)(b) said he ran down towards the parkway, and that it was approximately 4-5 blocks away. He said he did not know how he found himself there, but he did. § 87(2)(b) said he ran a long way.

§ 87(2)(b) knew § 87(2)(b) was dragged out of his car at the end of this incident. § 87(2)(b) did not see § 87(2)(b) dragged out, just heard about it later. He went to a corner and looked over a bridge at which time he heard someone say, "The kid is dead down there." § 87(2)(b) ran towards a number of police vehicles and asked a number of officers stopping traffic if § 87(2)(b) was down at the scene. Those officers took § 87(2)(b)'s license and told him to sit towards the side where he waited 30-40 minutes. § 87(2)(b) had difficulty explaining how he left the scene but eventually said he called someone from a gas station that picked him up and drove him to § 87(2)(b) where § 87(2)(b) was located. The police had told § 87(2)(b) that § 87(2)(b) had been transported to § 87(2)(b).

§ 87(2)(b) said he had a little bit of marijuana on him that night. § 87(2)(b) did not know which person had marijuana in the car. § 87(2)(b) did not smoke anything that night and did not believe anyone else smoked that night. There were about \$20-\$40 worth of weed in the car—about an eighth of marijuana. § 87(2)(b) did not have anything to drink that night and there were no other drugs in the vehicle. § 87(2)(b) spoke to § 87(2)(b) about the incident afterwards. § 87(2)(b) did not know what § 87(2)(b) was charged with, but the police said he had drugs. However, § 87(2)(b) said it was not possible that § 87(2)(b) had drugs because § 87(2)(b) would not get into a vehicle with anyone who had drugs. § 87(2)(b) has been working for six years and does not want to get in trouble.

Attempts to Locate Additional Witnesses

On January 14, 2008, the undersigned canvassed the location of White Plains Road and East 228th Street (Enc. 62A). During this time, the undersigned visited numerous places of businesses surrounding the site of the incident, including Sammy's II Deli/Grocery, Twin Pharmacy, and spoke to several employees. None of the employees reported having witnessed the shooting, though some said they would give please-call letters the undersigned investigator provided to their fellow employees who may have been working at the time. In addition, numerous please call letters were left in the mailboxes of a residential building near the incident location (711 East 228th Street and 4048 White Plains Road), requesting anybody who witnessed the shooting to contact the undersigned. To date, nobody has contacted the undersigned investigator to provide witness testimony concerning this incident.

Identification of Officers Interviewed

Officer Acosta was identified as the officer who discharged his firearm according to numerous police documents, § 87(2)(g). The Patrol Borough Bronx Task Force roll call and Internal Affairs case file indicated that Sgt. Triolo was his supervising officer and that Officer Cotto, Officer Green, Officer Egan and Officer Juste were also working with him doing Operation Atlas, § 87(2)(g). The Firearms Investigation unit closing report indicated that Officer Brannigan and Officer Whitlock were the Anti-Crime officers who stopped § 87(2)(b) and § 87(2)(b) on the Bronx River Parkway, § 87(2)(g).

Subject Officer: PO Daniel Acosta

The radio communications for this incident (Enc. 61A), recorded on August 16, 2008, has Officer Acosta and other unidentified officers saying the following over the radio:

PO Acosta gets on the air, saying something about 220 (referring to East 228th Street).

Unidentified: Shots fired (said very quickly).

[Garbled voices]

Operator begins speaking.

Unidentified: It's 220 something...
PO Acosta: A black (unintelligible) Honda.
Operator: What's your location?
PO Acosta: 228 and White Plains going down Bronx Park East.
PO Acosta: A heavy-set black male, he tried to drag me in the car. He's possibly wounded in the leg.
Unidentified: Shots are fired?
PO Acosta: Yes.
PO Acosta: (Unintelligible) It's a black vehicle. I'm pretty sure I hit the male in the leg.
Operator: What unit is this K?
[Unintelligible]
Unidentified: I think he said south-bound Bronx Park East.
Unidentified: (Screaming) Get out of the car now.
Unidentified: Get out the car right now.
Unidentified: Go, go, go.
[Operator asks for a description]
Unidentified: Atlas sergeant.
Operator: Atlas sergeant.
Unidentified: (Screaming) Get out of the car, get on the ground. We got the perp...I got a male shot.

On November 12, 2008, Officer Daniel Acosta, of Patrol Borough Bronx Task Force, was interviewed by the Patrol Borough Bronx Investigations Unit (Enc. 1A-U). He is a Hispanic male, 5'9", 168 pounds with black hair and brown eyes. § 87(2)(g)

Officer Acosta's arrest report for § 87(2)(b) (Enc. 27A-C) indicated that § 87(2)(b) had marijuana on his lap in plain-view when Officer Acosta approached. Officer Acosta directed § 87(2)(b) to hand over the marijuana and § 87(2)(b) refused. As Officer Acosta placed his hands upon the marijuana, § 87(2)(b) grabbed Officer Acosta's body, placed the vehicle in drive and began driving off, thereby dragging Officer Acosta. Officer Acosta directed § 87(2)(b) to place the car in park and § 87(2)(b) refused to comply with his order to stop so he could place § 87(2)(b) under arrest. § 87(2)(b)'s actions caused Officer Acosta to suffer pain to his groin and ankle and to be treated at § 87(2)(b). The report also states that 42 Ziploc bags containing crack and cocaine were recovered.

Officer Acosta's arrest report for § 87(2)(b) (Enc. 26A-C) states, "§ 87(2)(a) 160.50

" The arrest report narrative is truncated there.

Officer Acosta's criminal court complaint for § 87(2)(b) (Enc. 25A-D) stated that Officer Brannigan informed Officer Acosta that § 87(2)(b) flailed his arms and refused to place his hands behind his back to be handcuffed. The criminal court complaint for § 87(2)(b) (Enc. 25A-D) states § 87(2)(b) § 87(2)(a) 160.50

Officer Acosta was interviewed at the CCRB on January 23, 2009 (Enc. 29A-C). Also present were PBA Attorney Hugo Ortega and Investigator Max Gross. Officer Acosta said he was assigned to patrol on foot between East 228th Street and East 130th Street, which he described as a drug-prone location. He described East 228th Street as a one-way street aligned east to west. Officer Acosta said he reached East 228th Street and observed an individual's vehicle, identified as § 87(2)(b) parking on the opposite side of the street from him on the corner. § 87(2)(b) parked next to a fire hydrant. Officer Acosta was approximately 20 feet away when he first observed § 87(2)(b) and his passengers. Officer Acosta could not recall if the vehicle was running at the time. The vehicle, a four door dark colored vehicle, likely green colored, was also parked in the middle of the pedestrian crosswalk. Officer Acosta had no intention of stopping the vehicle at the time. When Officer Acosta first observed the vehicle, § 87(2)(b) was seated in the driver seat, the other individual arrested, identified as § 87(2)(b) was seated in the passenger seat. A third individual, identified as § 87(2)(b) was seated in the backseat of the vehicle. § 87(2)(b) got out of the

vehicle and walked to the corner store bodega. In Officer Acosta's initial interview with Bronx Firearms Investigations Unit (BFIU) he said that he heard § 87(2)(b) ask § 87(2)(b) if he wanted a drink to which § 87(2)(b) replied, "Nah, I'm good." Officer Acosta said there was a traffic light positioned above § 87(2)(b) and the compartment light was on in the vehicle. On White Plains Road, approximately five stores down from the corner store bodega, was a marked van containing Sgt. Triolo and Officer Cotto, which was facing the opposite direction of Officer Acosta. Officer Acosta did not see any other civilians in the area.

When Officer Acosta first saw § 87(2)(b) he was looking down towards his lap. As Officer Acosta approached the vehicle, he observed § 87(2)(b) look up at him quickly. § 87(2)(b) then nudged § 87(2)(b) with his right hand and spoke to him, although Officer Acosta could not hear what they were saying. § 87(2)(b) then looked at Officer Acosta. Officer Acosta said he had to walk around the vehicle because it was parked in the pedestrian crosswalk. However, once he approached the driver side door, the window was down, and he looked into the vehicle. On § 87(2)(b)'s lap was a bag of marijuana, possibly a couple ounces, and a Dutch cigar, which § 87(2)(b) was using to roll marijuana, all laying on a small hand towel.

Without saying anything, Officer Acosta reached into the vehicle with his left arm and grabbed the marijuana. Officer Acosta said, "There wasn't much to say." § 87(2)(b) said, "Ok, ok, ok," but immediately grabbed Officer Acosta's left wrist and forearm area. Officer Acosta told § 87(2)(b) to get out of the vehicle because he was under arrest. § 87(2)(b) began reaching between the seat and door. Officer Acosta did not know what § 87(2)(b) was moving towards. Officer Acosta told § 87(2)(b) not to move and told § 87(2)(b) to put his hands where he could see them. § 87(2)(b) never looked at Officer Acosta, just kept looking straight ahead.

§ 87(2)(b) was resisting arrest at that point and continued to pull Officer Acosta's arm. § 87(2)(b) was holding Officer Acosta with only one arm; § 87(2)(b)'s left arm. In Officer Acosta's initial interview with BFIU, he stated that he grabbed § 87(2)(b) by his shirt. However, later in that interview Officer Acosta said he never tried to grab § 87(2)(b) and that § 87(2)(b) was grabbing him. Officer Acosta described it as a "back and forth" struggle between them. § 87(2)(b) would not let go of his arm. § 87(2)(b) placed his vehicle in drive at which time Officer Acosta reached for his gun with right hand, unholstered it, and pointed the barrel of the gun against § 87(2)(b)'s left temple on § 87(2)(b)'s head. § 87(2)(b) never let go of Officer Acosta. Officer Acosta said, "If you take me with this vehicle down the street, I'm going to kill you." § 87(2)(b) said to Officer Acosta, "What you going to do, shoot me for a Dutch?" Officer Acosta said § 87(2)(b) actually might have asked, "What you going to do, shoot me for drugs?" Officer Acosta explained that he placed his gun against § 87(2)(b)'s left temple because he thought § 87(2)(b) was "going to take him for a ride." Officer Acosta believed § 87(2)(b) was going to try and drive away with Officer Acosta in tow.

Officer Acosta said once § 87(2)(b) put the car in drive, § 87(2)(b) changed the position of his grip on Officer Acosta, grabbing Officer Acosta's left shoulder area with his left hand, the place where Officer Acosta's bullet proof vest was located. § 87(2)(b) grabbed Officer Acosta's vest and shoulder area at the same time. Officer Acosta explained that he changed his grip from Officer Acosta's wrist to Officer Acosta's shoulder area because Officer Acosta was trying to get § 87(2)(b) out of the car. Officer Acosta never tried to open the car door explaining that § 87(2)(b) is "fat and heavy" and he could not "shake him."

§ 87(2)(b) held on to Officer Acosta and began driving away. During Officer Acosta's initial interview with BFIU, he stated that § 87(2)(b) told him, "Ok officer, I'm getting out," and then "calmly" put the car into drive. As § 87(2)(b) began driving, Officer Acosta felt he could not keep up with the car with his feet. Officer Acosta said he tried to run with the car but could not keep up with it because § 87(2)(b) was moving fast.

Once the car began driving, Officer Acosta's gun was knocked away from § 87(2)(b)'s head because the frame of the driver side window knocked into Officer Acosta's shoulder, twisting Officer Acosta's body. Officer Acosta said during his initial interview with BFIU he was "losing the match," so he reached into the car and shot § 87(2)(b) causing § 87(2)(b) to let him go. In his CCRB interview, Officer Acosta stated his gun arm was knocked out of the vehicle at that point. Officer Acosta reached back into the vehicle with his gun with the intention of shooting § 87(2)(b). Officer Acosta said § 87(2)(b) was a very "fat" individual and had "fat" thighs. His intention was to shoot § 87(2)(b) but did not know where he was shooting. Officer Acosta discharged one round into § 87(2)(b)'s left thigh.

Once he fired his weapon, § 87(2)(b) let go of Officer Acosta. Officer Acosta said that he never fell to the ground but kept running with the vehicle. Officer Acosta continued running after § 87(2)(b).

§ 87(2)(b)'s vehicle after § 87(2)(b) let go of him. Officer Acosta said he did not know how many feet away he had gone with the vehicle as § 87(2)(b) held him, saying it could have been either 2 feet or 20 feet. Officer Acosta could not recall if he was saying anything to § 87(2)(b) as he was dragged but § 87(2)(b) did not say anything to him. Officer Acosta did not know how long he was dragged for. Officer Acosta said he fired the round because he feared for his life, thinking that he was either going to fall under the car or § 87(2)(b) was going to slam him into a pillar supporting the overhead subway nearby. Officer Acosta was asked why he continued to hold on to the marijuana if he feared for his life and Officer Acosta said, "Fear does crazy things to you, doesn't it?" Officer Acosta said it never occurred to him to let go of the marijuana during the struggle. During Officer Acosta's BFIU interview he said he could not call for help because his radio was on his left side.

§ 87(2)(b) continued driving. During Officer Acosta's interview with BFIU he said he chased the car 15 feet towards the overhead train station. Officer Acosta then ran towards the marked van. Officer Cotto asked Officer Acosta if he heard that and Officer Acosta said he did and told Officer Cotto, "I shot the fat guy in the car." Sgt. Triolo asked Officer Acosta what direction § 87(2)(b) went and Officer Acosta pointed west on East 228th Street. Officer Acosta was not sure if he showed Sgt. Triolo the bag of marijuana. Officer Acosta did not know how big the bag was but said it was a couple ounces of marijuana. Officer Acosta did not know if he approached Sgt. Triolo's vehicle with the gun in his hand and did not know when he holstered it.

Officer Acosta did not know when he first got on the radio concerning this shooting, it could have either been right after the shooting or when he got into the van. Officer Acosta did not recall what he said in the transmission. Officer Acosta said during his interview that he said, "fat black Honda," over the radio or something along those lines in an attempt to describe § 87(2)(b) and the vehicle § 87(2)(b) was driving. Lights and sirens were activated and they observed § 87(2)(b)'s vehicle near Bronx River North near the ramp of Bronx River Parkway, he did not know what street exactly. § 87(2)(b)'s vehicle was stopped when he first saw it. Officer Acosta believed § 87(2)(b) and § 87(2)(b) switched seats because when § 87(2)(b)'s vehicle was eventually stopped, they were in different seats. Once § 87(2)(b)'s vehicle began moving again, a bag was thrown from the passenger side of the vehicle a little bit before the on-ramp to the Bronx River Parkway. From the point of the shooting to the point § 87(2)(b) threw out the drugs was approximately two minutes. The van was stopped and Officer Acosta got out of the vehicle to grab the bag. An off-duty police officer, name unknown, stopped by Officer Acosta and drove him to the scene where § 87(2)(b) was eventually stopped.

When Officer Acosta first showed up to the scene, § 87(2)(b) was on the ground towards the rear of the vehicle in handcuffs and § 87(2)(b) was in the passenger seat. Plainclothes officers had stopped § 87(2)(b)'s vehicle. Officer Acosta removed § 87(2)(b) from the vehicle with other officers by grabbing § 87(2)(b) by the arm and laying him on the road chest-first—the was no struggle to remove § 87(2)(b). Officer Acosta handcuffed § 87(2)(b). Officer Acosta did not know if an ambulance was called.

Officer Acosta became aware that he was injured after he was transported back to the scene of the shooting approximately two minutes after the handcuffing of § 87(2)(b). Officer Acosta's groin, ankle and left ear were injured—he lost some hearing in his left ear from the sound of the gunshot. Officer Acosta received his groin injury from being dragged down the street. Officer Acosta did not immediately become aware of his injuries because his adrenaline was going. Officer Acosta spoke with some supervisors after the shooting but could not recall who. Officer Acosta was told that on the sprint report, Sgt. Triolo indicated that Officer Acosta was not injured. Officer Acosta was asked if he told Sgt. Triolo he was not injured. Officer Acosta said he did not know where Sgt. Triolo was getting that from.

Witness Officer: Sgt. Dominic Triolo

Sergeant Dominic Triolo, of Patrol Borough Bronx Task Force, was interviewed by Patrol Borough Bronx Investigations on August 16, 2007 (Enc. 1A-U). On December 30, 2008, Sergeant Dominic Triolo, of Patrol Borough Bronx Task Force, was interviewed at the CCRB (Enc. 25A-C).

§ 87(2)(g) He is a white male, 6'1", 220 pounds with brown hair and blue eyes. On August 28, 2007, Sgt. Triolo was working in uniform from 5:10pm until 2:13am the following day working with Officer Cotto in a marked van doing Operation Atlas. Sgt. Triolo stated that his memo-book had been confiscated due to an Internal Affairs investigation.

Sgt. Triolo stated that on the incident date, he was parked on White Plains Road in a van with Officer Cotto. Sgt. Triolo was performing Operation Atlas which entailed supervising eight officers, one that

was driving Sgt. Triolo and the other seven officers were assigned to foot posts in the area. Sgt. Triolo did not know which foot post Officer Acosta was assigned to that night.

Sgt. Triolo had been parked on White Plains Road for approximately five to ten minutes when Officer Acosta shot an individual identified as § 87(2)(b). Sgt. Triolo was not aware that Officer Acosta had fired his gun until Officer Acosta ran towards Sgt. Triolo's vehicle. However, during Sgt. Triolo's initial interview with PBBX Investigations he said he did hear the gunshot when it was first fired. Sgt. Triolo believed it was seconds from the point Officer Acosta fired his gun to the point Officer Acosta reached Sgt. Triolo's vehicle. Sgt. Triolo heard some "bangs" but said that the bangs could have been anything, including stores closing their shutters. There was also an overhead train nearby that produced a lot of noise. Sgt. Triolo was parked approximately 50 feet away south from East 228th Street from where the shooting occurred facing the opposite direction.

Officer Acosta ran towards Sgt. Triolo, handed him a bag of marijuana the size of a softball, and said, "I just shot somebody." Officer Acosta said, "I think I shot him in the leg." Officer Acosta told Sgt. Triolo that he obtained the bag of marijuana from one of the occupants of the vehicle. Officer Acosta did not have any blood on his person. Officer Acosta did not go over the radio prior to telling Sgt. Triolo he just shot someone. Sgt. Triolo did not know if Officer Acosta had his gun in his hand at that point. Officer Acosta was sweating, excited and had "a lot of emotions." Sgt. Triolo never saw § 87(2)(b)'s vehicle prior to that moment. Sgt. Triolo never heard any vehicle peeling away from the scene. Officer Acosta got into the van and Officer Cotto began driving in pursuit of § 87(2)(b). Officer Acosta said the vehicle was headed westbound on 228th Street from White Plains Road.

Sgt. Triolo first went over the radio when they were in pursuit of the vehicle, providing a transmission of the direction of the suspect's vehicle. Sgt. Triolo asked Officer Acosta to go over the radio and Officer Acosta indicated that there had been a shooting and called an 85. Sgt. Triolo headed westbound on East 228th Street and was looking for brake lights because there were not a lot of other vehicles in the area. Sgt. Triolo first observed § 87(2)(b)'s vehicle, a dark colored sedan, at East 228th Street and Bronx Boulevard. The vehicle was parked in the middle of the street. Officer Acosta confirmed that was the vehicle and then lights and sirens were activated. The officers had caught up with the vehicle in approximately half a minute. Sgt. Triolo did not see anything going on inside the car.

Once the lights and sirens were activated, the vehicle began driving away. The suspect's vehicle entered the highway approximately two blocks away and then began driving on the service road. Right before § 87(2)(b) drove on to the highway, a bag was thrown from the passenger side of the vehicle. At that point, Sgt. Triolo allowed Officer Acosta out of the vehicle to retrieve that bag. Sgt. Triolo later learned the bag contained heroin and crack.

Officer Cotto and Sgt. Triolo traveled along the Bronx River Parkway for another 200 feet when an unmarked Bronx Anti-Crime vehicle slowly pulled in front of the suspect's vehicle bringing the suspect's vehicle to a stop. Sgt. Triolo did not know who the Anti-Crime officers were but there were three in the vehicle.

Sgt. Triolo and Officer Cotto approached the passenger side of the suspect's vehicle with both their guns pointed at the car, which actually turned out to be where § 87(2)(b) the individual shot in the leg, was seated. The Anti-Crime officers also approached with guns pointed at § 87(2)(b)'s vehicle. The officers were ordering § 87(2)(b) out of the car, saying, "Police, get out of the car." No officer said, "Get the fuck out of the car," or threatened to shoot anyone in the car. No officer used any profanity at any point. Sgt. Triolo believed one of the Anti-Crime officers opened § 87(2)(b)'s passenger side door. Sgt. Triolo observed blood on § 87(2)(b)'s leg. § 87(2)(b) weighed approximately 350 pounds and was refusing to get out. The officers tried verbal commands but § 87(2)(b) was not complying. Sgt. Triolo, Officer Cotto and one of the Anti-Crime officers grabbed § 87(2)(b)'s right arm and pulled him out of the car. § 87(2)(b) landed on the ground chest-first and was then handcuffed. Officer Acosta made his way towards the scene at that point and placed the handcuffs on § 87(2)(b). Sgt. Triolo did not know exactly when Officer Acosta arrived. Sgt. Triolo did not know what was happening with the driver, § 87(2)(b). Sgt. Triolo never observed any officers kicking, punching or striking § 87(2)(b) in any manner.

Sgt. Triolo called an ambulance and crime scenes were established. Sgt. Triolo did not observe any injuries on § 87(2)(b) and did not hear him complain of any injury. Sgt. Triolo did not have any conversations with the arrestees. A duty captain, Capt. Lieber, arrived on scene in addition to many other officers.

After Sgt. Triolo called the ambulance, Officer Acosta handed him the bag of narcotics he recovered and said, "I hurt my leg." Sgt. Triolo asked 47th Precinct patrol officers to take Officer Acosta to

the hospital. However, during Sgt. Triolo's interview with PBBX Investigations he indicated that Officer Acosta never told him he was injured at any point. Sgt. Triolo indicated that a "delegate" told him that Officer Acosta was injured and was going to the hospital. Sgt. Triolo was informed during his interview there was a Sprint communication where he indicated Officer Acosta was not injured when Central Command asked him. Sgt. Triolo did not recall whether Officer Acosta later became aware of the injury. Officer Acosta never indicated how he sustained his injury. Sgt. Triolo learned Officer Acosta was dragged by § 87(2)(b) when all the officers testified in court.

Subject Officer: PO Gabriel Cotto

Officer Gabriel Cotto, of Patrol Borough Bronx Task Force, was interviewed by Patrol Borough Bronx Investigations on August 16, 2008 (Enc. 1A-U). Officer Cotto was interviewed at the CCRB on December 31, 2008 (Enc. 33A-C). § 87(2)(g) He is a white male, 5'9", 180 pounds with black hair and brown eyes. On August 16, 2007, he was working in uniform from 5:30pm until 2:05am doing Operation Atlas with Sgt. Triolo in a marked van. Officer Cotto did not have his memo-book at the time of his interview.

Officer Cotto was sitting in his van with Sgt. Triolo when he heard a gunshot go off. Officer Cotto was not a hundred percent sure it was a gunshot at the time but heard a popping noise. Officer Cotto might have told Sgt. Triolo he heard a gunshot go off. Officer Cotto turned to his rear and saw Officer Acosta running towards the van. Officer Acosta was approximately 100 feet away when he fired his gun but Officer Cotto did not actually see Officer Acosta fire his weapon. When Officer Acosta reached the van he told Sgt. Triolo and Officer Cotto he discharged his firearm. Officer Acosta was out of breath but calm. Officer Acosta was holding a bag of marijuana in his hand and was telling the sergeant what happened with § 87(2)(b) saying he fired his weapon and the suspects fled the scene.

Officer Acosta got into the vehicle and Officer Cotto made a U-turn. Officer Cotto then began driving westbound on East 228th Street, a one-way street, in pursuit of the suspect's vehicle. Officer Cotto was asking Officer Acosta if he knew where the vehicle was and Officer Acosta said he was not sure. While they pursued the suspects, Officer Acosta told Officer Cotto he reached into the vehicle and grabbed the marijuana from an individual identified as § 87(2)(b) with his left hand. Officer Acosta told Officer Cotto that when he grabbed the marijuana from the driver, § 87(2)(b) grabbed Officer Acosta's arm and put the car in drive and wanted to take off still holding Officer Acosta. Officer Acosta had his hand on his gun and pulled it out and shot § 87(2)(b) Officer Acosta never indicated how far he was dragged by § 87(2)(b)

Officer Cotto was only driving in the direction the vehicle went but did not actually see it until Officer Cotto made a right turn off East 228th Street on to another unidentified one-way street. He then saw § 87(2)(b)'s vehicle, as described by Officer Cotto, parked in the middle of the road. At that time, Officer Cotto activated lights and sirens. Officer Cotto pursued the suspect's vehicle on to Bronx River Road towards the Bronx River Parkway North. Officer Cotto was signaling for the car to stop. During that time, Sgt. Triolo transmitted over the radio that two males were inside a vehicle headed towards the Bronx River Parkway. An unmarked Anti-Crime vehicle appeared in front of § 87(2)(b)'s vehicle and tried to cut off § 87(2)(b)'s vehicle. § 87(2)(b)'s vehicle made a left turn on to the Bronx River Parkway. Officer Cotto observed an article thrown out of the car which Officer Cotto believed at the time was drugs but did not know for sure. Officer Cotto let Officer Acosta out of the vehicle to retrieve this object.

Officer Cotto then drove on to the Bronx River Parkway where the Anti-Crime vehicle had the suspect's vehicle stopped. One of the Anti-Crime officers was Officer Brian Brannigan but Officer Cotto did not know the other officers. Officer Brannigan got out of his vehicle and approached § 87(2)(b)'s driver's door. Officer Acosta did not know if Officer Brannigan drew his gun but Officer Cotto knew he did not draw his own gun. Officer Cotto never heard any officer say, "Stop the fucking car or I'll shoot." Officer Brannigan made it to the driver's door before Officer Cotto did. Officer Cotto ran towards the driver, identified via investigation as § 87(2)(b) as Officer Brannigan was opening the driver side door. Officer Cotto said § 87(2)(b) did not act in any manner once they got to the vehicle and did not say anything. However, both officers had to remove him from the vehicle because he did not get out on his own. Officer Brannigan grabbed § 87(2)(b) by his arm and pulled him out and Officer Cotto grabbed § 87(2)(b) from behind. Both officers then placed him on the ground by pushing him down. Officer Cotto described § 87(2)(b)'s physical condition at that time as "fine." Officer Cotto did not recall saying anything in particular to § 87(2)(b) but if he had said something, he would have said, "Don't resist and get on the floor." Officer Cotto did not know what Officer Brannigan said if anything. Once § 87(2)(b) was on the ground he would

not provide his hands to be handcuffed. Officer Brannigan grabbed one arm and Officer Cotto grabbed the other and pulled it behind § 87(2)(b)'s back. Officer Cotto did not recall who placed the handcuffs on § 87(2)(b). Officer Cotto was asked if that was all the force needed to get § 87(2)(b)'s arm behind his back and Officer Cotto said that it was. No officer ever kicked § 87(2)(b).

Officer Cotto did not know what Sgt. Triolo was doing while Officer Cotto was arresting § 87(2)(b). Another Anti-Crime sergeant was dealing with § 87(2)(b) at that time. Officer Cotto went around to the vehicle and helped Sgt. Bernard get § 87(2)(b) out of the vehicle once § 87(2)(b) was in handcuffs. Officer Cotto did not know if Officer Brannigan came to the other side of the vehicle to help. They tried to tell § 87(2)(b) to get out on his own but Officer Cotto guessed § 87(2)(b) could not do it on his own because he had a gunshot wound and was likely going into shock. Sgt. Bernard grabbed one of § 87(2)(b)'s arms and Officer Cotto grabbed the other arm and they pulled § 87(2)(b) out of the vehicle and placed him on the ground. They then placed handcuffs on him. § 87(2)(b) did not offer any resistance. Officer Cotto could not recall if Sgt. Triolo helped them handcuff § 87(2)(b). Officer Acosta arrived on scene after both suspects were in handcuffs. Officer Acosta did not speak with the suspects and they did not say anything to Officer Acosta. After § 87(2)(b) was placed under arrest, Officer Cotto went around to the other side of the vehicle. Officer Brannigan had already picked up § 87(2)(b) and placed him inside his unmarked car.

An ambulance was called. Officer Cotto did not remember Officer Acosta initially telling him about any injury—Officer Acosta was able to run to their van. However, after the incident concluded, Officer Acosta complained of an injury to his groin.

Witness Officer: Sgt. Robert Barnett

Sergeant Robert Barnett, of Patrol Borough Bronx Anti-Crime, was interviewed by IAB on August 16, 2007 (Enc. 1A-U). Sgt. Barnett was working in plainclothes from 5:15pm until 2:12am with Officer Brannigan and Officer Whitlock in unmarked vehicle 441 doing Anti-Crime patrol. § 87(2)(g)

At approximately 1:00am Sgt. Barnett heard a call for assistance being broadcasted over division radio, with a description of a dark automobile fleeing westbound on East 228th Street towards the Bronx River Parkway. He immediately responded to the area. When his team reached Bronx Boulevard, near the entrance to the Bronx River Parkway, Sgt. Barnett observed a dark colored vehicle, occupied by two black males being pursued by a police van with lights and sirens. The suspect's vehicle then proceeded onto the onramp of the Bronx River Parkway North and Sgt. Barnett's operator pulled directly behind the fleeing vehicle. Almost immediately after joining the pursuit, Sgt. Barnett observed what appeared to be a plastic bag thrown from the front passenger window of the suspect's vehicle. As they neared the East 233rd Street overpass, Officer Brannigan utilized the unmarked vehicle's strobe lights and siren, pulled over the suspects and subsequently stopped in front of the suspect's vehicle while the marked van stopped behind it.

Sgt. Barnett then exited the RMP and approached the front passenger, later identified as § 87(2)(b) who was screaming in pain and bleeding profusely from his left leg. § 87(2)(b) was promptly removed from the scene via ambulance to § 87(2)(b). The individual driving the vehicle at the time, § 87(2)(b) spontaneously stated to Sgt. Barnett that he was not the person who was originally driving the vehicle. § 87(2)(b) reported that he and § 87(2)(b) had switched positions after the encounter with initial officer. § 87(2)(b) divulged that all he remembered was being half asleep, sitting in the front passenger seat of § 87(2)(b)'s parked car on a street corner, while § 87(2)(b) seated in the driver's seat, rolled a marijuana cigarette. § 87(2)(b) further stated that he recalled first feeling the vehicle he was in abruptly accelerate and then afterwards a gunshot was fired.

Subject Officer: PO Brian Brannigan

Officer Brian Brannigan, of Bronx Anti-Crime, was interviewed by Patrol Borough Bronx Investigations on August 16, 2008 (Enc. 1A-U). Officer Brannigan was interviewed by CCRB on January 30, 2009 (Enc. 32A-B). § 87(2)(g)

Officer Brannigan is a white male, 5'7", 190 pounds with blonde hair and blue eyes. On August 16, 2007, he was working from 5:30pm until 2:05am with Officer Whitlock and Sgt. Bernard doing Anti-Crime patrol in an unmarked vehicle.

On August 16, 2007, Officer Brannigan was in the vicinity of East 228th Street and Barnes road when he heard a 10-13 come over the radio. Officer Brannigan did not know who called the 10-13 but the

information provided was that shots were fired and an officer needed assistance. The officer also indicated he had been dragged. An officer over the radio indicated that there was a dark colored vehicle fleeing on East 228th Street and Bronx River Parkway. Officer Brannigan drove towards the location and ended up on 233rd Street and Bronx River Parkway. Officer Brannigan observed the suspect's vehicle with a marked van pursuing with lights and sirens. It took Officer Brannigan a few seconds in total to reach the suspect's vehicle. Officer Brannigan observed two black males in the vehicle with the window open. The suspect's vehicle cut in front of Officer Brannigan's vehicle and the passenger threw an object out of the window before proceeding on to Bronx River Parkway North. Officer Brannigan activated his lights and sirens. Officer Brannigan pulled up alongside the vehicle and yelled to the occupants to pull over. Officer Brannigan then pulled his vehicle in front of § 87(2)(b)'s vehicle, causing the vehicle to slow to a stop. Officer Brannigan got out of his vehicle and approached § 87(2)(b)'s vehicle.

The driver, identified as § 87(2)(b) was reaching down and not showing his hands. Officer Brannigan yelled, "Police, let me see your hands." Officer Brannigan never used any profanity and no other officer did either. Officer Brannigan never said, "Get the fuck out of the car." Officer Brannigan never drew his gun or pointed it but did not know if any other officers did. Because § 87(2)(b) was moving around inside the vehicle, Officer Brannigan opened the car door and grabbed § 87(2)(b)'s upper body. Officer Brannigan did not recall any other officers coming to the door with him. § 87(2)(b) resisted Officer Brannigan's efforts to pull him out of the vehicle but eventually Officer Brannigan pulled him out. § 87(2)(b) got to his feet and got into a fighting stance with his fists in the air. He then pushed Officer Brannigan's chest area but he did not know if § 87(2)(b) pushed him with an open fist or closed fist. Officer Brannigan was nearly pushed into the next lane of traffic.

Officer Brannigan then approached § 87(2)(b) again but § 87(2)(b) began flailing his arms and moving his arms away from Officer Brannigan. When Officer Brannigan was asked during his CCRB interview if he ever struck, punched or kicked § 87(2)(b) Officer Brannigan said, "Yeah, I could have probably struck him, sure." Officer Brannigan was initially unsure how many times he struck § 87(2)(b) but eventually said he struck § 87(2)(b) "approximately" once in the upper body area. Officer Brannigan then pushed § 87(2)(b) to the ground chest-first. § 87(2)(b) placed his hands underneath his chest. Officer Whitlock and Officer Cotto, an officer from the marked van, pulled § 87(2)(b)'s arms behind his back and handcuffed him in a matter of seconds once he was on the ground. Officer Brannigan did not strike § 87(2)(b) once he was on the ground. Officer Brannigan was not aware how § 87(2)(b) could have sustained any bruises. Officer Brannigan did not observe any injuries on § 87(2)(b) and § 87(2)(b) did not complain of any injuries.

Officer Brannigan was not aware of what was occurring with § 87(2)(b) on the other side of the vehicle. Officer Brannigan never went to that side of the vehicle. He never saw § 87(2)(b) removed from the vehicle but did see him placed on a stretcher by EMS. § 87(2)(b) had blood on his person. Officer Brannigan believed he stayed and help secure the crime scene after that point.

Witness Officer: PO James Whitlock

Officer James Whitlock, of Bronx Anti-Crime, was interviewed by Patrol Borough Bronx Investigations Unit on August 16, 2008 (Enc. 1A-U). On January 30, 2009, Officer James Whitlock was interviewed at the CCRB (Enc. 36A-B). § 87(2)(g) Officer Whitlock is a § 87(2)(b) old black male, 6'0", 210 pounds with black hair and brown eyes. On August 16, 2007, Officer Whitlock was working in plainclothes from 5:30pm until 2:05am with Officer Brian Brannigan and Sgt. Robert Barnett in a black Impala doing Anti-Crime patrol.

§ 87(2)(g) Once § 87(2)(b)'s vehicle was stopped, § 87(2)(b) began fidgeting in his seat and reaching down. Officer Whitlock pointed his gun at the suspect's vehicle while Officer Brannigan opened the vehicle door. § 87(2)(b) resisted being removed from the vehicle by placing his hands on the steering wheel and leveraging his body toward the passenger's side of the vehicle. After § 87(2)(b) shoved Officer Brannigan, Officer Whitlock became physically involved in controlling § 87(2)(b). In Officer Whitlock's testimony to Patrol Borough Bronx Investigations Unit, he made no mention of Officer Brannigan being pushed. Officer Whitlock holstered his gun, grabbed § 87(2)(b) and with Officer Brannigan, pulled § 87(2)(b) down to the ground. To the best of his knowledge, Officer Whitlock did not punch, kick or strike § 87(2)(b) nor did anyone else. Once § 87(2)(b) was on the ground, it took a couple of seconds to handcuff § 87(2)(b) as he had his arms folded tightly to his body, and the officers needed to pull § 87(2)(b)'s hands behind his back. Officer Whitlock is not certain who eventually handcuffed § 87(2)(b).

After § 87(2)(b) was in handcuffs, Officer Whitlock put him into the RMP. § 87(2)(b) did not appear to have any injuries, and Officer Whitlock did not know if § 87(2)(b) had been hit in the shoulder. After placing § 87(2)(b) in the RMP, Officer Whitlock stayed at the crime scene and secured it. Upon being asked, Officer Whitlock said that he had seen the passenger, § 87(2)(b) bloodied and unconscious on the scene.

Witness Officer: PO Brian Williams

Officer Brian Williams, of Patrol Borough Bronx Task Force, was interviewed on January 7, 2009. He is a white male, 6'2", 225 pounds with brown hair and hazel eyes. On August 16, 2007, Officer Williams was working in uniform from 7:30pm until 2:05am but did overtime until 2:05pm the following day doing Operation Atlas with Officer Agosta on a foot post. Officer Williams' memo-book stated, "0102: pickup of a shooting at 228 and white plains road; 0140: 84 St. Barnabus Hospital; 0630: 84 47 PCT."

Officer Williams stated that he was at the end of the Atlas tour standing on White Plains Road and East 241st Street with Officer Ericco Agosta. Officer Williams thought he heard over the radio Officer Acosta saying something to the effect of, "Central, I think he's wounded in the leg," but never heard any gunshot. Officer Williams did not recall hearing anyone else over the radio. Officer Williams flagged down a livery cab and they got a ride down to East 228th Street. It took the officers about five minutes to get to the scene. There were police vehicles present but Officer Acosta was gone and so were the suspects. Officer Williams did not remember a crime scene being setup.

Officer Williams saw Officer Acosta arrive on scene twenty minutes later and then rode with him in an ambulance to § 87(2)(b). While on scene Officer Williams overheard Officer Acosta telling an unknown supervisor with a white shirt what had happened. Officer Acosta told this supervisor that he was standing at his post when he ended up in an exchange with a driver. When going to the driver's door he thought the driver grabbed his arm and started dragging him across White Plains Road. Officer Acosta said he ended up shooting the driver. Officer Acosta mentioned there were drugs in the car, possibly on the driver's lap, but Officer Williams did not recall what kind of drugs. Officer Williams did not recall observing any injury to Officer Acosta's person and could not recall why he went to the hospital. Officer Williams did not know if any supervisor told Officer Acosta he had to go to the hospital.

Witness Officer: PO David Egan

Witness Officer: PO Erik Green

Officer David Egan, of Patrol Borough Bronx Task Force, was interviewed at the CCRB on January 8, 2009 (Enc. 38A-B). He is a white male, 6'3", 205 pounds with brown hair and blue eyes. On August 16, 2007, he worked in uniform from 7:30pm until 2:05 doing Operation Atlas assigned to foot post 3E with Officer Erik Green. Officer Egan's memo-book stated, "0100: Respond to shots fired at 228 and White Plains Road; 0130: Respond to 228 and Laverne to secure street for ESU evidence search" (Enc. 37A-B).

Officer Erik Green, of Patrol Borough Bronx Task Force, was interviewed at the CCRB on December 31, 2008 (Enc. 31A-B). He is a white male, 6'0", 235 pounds with black hair and hazel eyes. On August 16, 2008, Officer Green was working in uniform from 7:30pm until 2:05am but worked additional overtime until 6:30am doing Atlas overtime with Sgt. Triolo on a foot post located on 235th Street and White Plains Road. Officer Green's memo-book stated, "0100: shots 228 and white; 0130: secure 228 and white and evidence search" (Enc. 30A-B).

Officer Egan and his partner were approximately two to three blocks away from the shooting. They heard Officer Acosta go over the radio and say, "Shots fired." Officer Egan believed he heard Officer Egan say the suspect was shot in the leg. They never heard the shot fired. They heard the location on the radio as East 228th Street and White Plains Road and went to the scene. Once they got there, Officer Acosta had already been picked up by a marked van and was in pursuit of the vehicle that had been involved in the shooting. There were already some other officers on scene. They stayed at that location for approximately a half hour to secure the scene and setup a perimeter. A half hour later they were told to secure the area for East 228th Street and Laverne Avenue. At approximately 1:30am Officer Egan saw Officer Acosta talking to a supervisor. Officer Egan did not know who that supervisor was believed that officer was from a different command. Officer Egan never discussed the details of this incident with Officer Acosta. § 87(2)(g)

Witness Officer: Lt. Jose Bravo

Lieutenant Jose Bravo, of the 40th Precinct, was interviewed by the Bronx Investigations Unit on an unknown date (Enc. 1A-U). § 87(2)(g)

On August 16, 2008, Lt. Bravo worked in uniform from 5:30pm until 2:05am. At approximately 1:00am, Lt. Bravo stated that he was in the vicinity of East Gunhill Road and White Plains Road when he heard a request for assistance, shots fired, over the division radio. He heard subsequent transmissions that a wanted perpetrator had been apprehended. Lt. Bravo then promptly responded to the scene of the original incident where the firearm was discharged, East 228th Street and White Plains Road, whereupon he immediately established a crime scene and notified the Duty Captain. Shortly after, the lieutenant secured the area. Officer Acosta returned to the location and Lt. Bravo directed him to produce his firearm for inspection. Lt. Bravo reported that Officer Acosta's Glock 19 service weapon contained fourteen rounds in the magazine and one in the chamber, indicating that one round had been discharged. Officer Acosta's secondary, off-duty Glock 26 firearm was fully loaded with twelve rounds in the magazine and one in the chamber, indicating no rounds had been discharged.

Medical Records

The Ambulance Call Report from August 16, 2007, stated, "Found in custody of NYPD in care of NYPD ESU on O2. Bleed control in progress." § 87(2)(b) stated to EMS that he was shot in the leg. EMS noted that § 87(2)(b) had active bleeding to his left knee and admitted to marijuana use. EMS also noted that two officers were present inside the ambulance. The call report is enclosed (Enc. 40A-B). On § 87(2)(b) § 87(2)(b) was transported to § 87(2)(b) via ambulance (Enc. 39A-D9). The medical records indicate he sustained a gun shot wound on his left thigh, shattering his femur bone, with the bullet exiting out the bottom of his left thigh. § 87(2)(b) was transferred to § 87(2)(b) where additional surgeries were performed on his leg. There are over 2,000 pages of medical records for § 87(2)(b). Most of these records were not enclosed in the case file as they are not pertinent to this investigation. They mostly document the various surgeries, medications administered to § 87(2)(b) and chart his progress in the hospital. § 87(2)(g)

§ 87(2)(b) was taken to § 87(2)(b) (Enc. 42A-O). He complained of shoulder pain and his initial diagnosis was possible shoulder dislocation. The records indicate that § 87(2)(b) was mildly uncooperative. § 87(2)(b) was given an X-ray which was negative for fractures or dislocations. § 87(2)(b) was diagnosed with a back strain and shoulder pain and given Motrin.

Sprint Communications

The following is a transcription of the radio transmissions following Officer Acosta's firearms discharge:

PO Acosta gets on the air, saying something about 220 (referring to East 228th Street).

Unidentified: Shots fired (said very quickly).

[Garbled voices]

Operator begins speaking.

Unidentified: It's 220 something...

PO Acosta: A black (unintelligible) Honda.

Operator: What's your location?

PO Acosta: 228 and White Plains going down Bronx Park East.

PO Acosta: A heavy-set black male, he tried to drag me in the car. He's possibly wounded in the leg.

Unidentified: Shots are fired?

PO Acosta: Yes.

PO Acosta: (Unintelligible) It's a black vehicle. I'm pretty sure I hit the male in the leg.

Operator: What unit is this K?

[Unintelligible]

Unidentified: I think he said south-bound Bronx Park East.

Unidentified: (Screaming) Get out of the car now.

Unidentified: Get out the car right now.

Unidentified: Go, go, go.

[Operator asks for a description]

Unidentified: Atlas sergeant.

Operator: Atlas sergeant.

Unidentified: (Screaming) Get out of the car, get on the ground. We got the perp...I got a male shot.

The following is a summary of radio communications after § 87(2)(b) was taken into custody:

The radio dispatcher begins directing units to respond to various locations and an unidentified officer requests officers to go to White Plains Road to setup a crime scene. The 47th Precinct sergeant gets on the air but his orders are unintelligible. Another unidentified officer requests officers to “shut down” White Plains Road and East 229th Street to set up a crime scene. Officers respond that they are going to the scene. The Duty Captain then gets on the air and asks if they are looking for anybody else and the Atlas sergeant responds that they are not. The Atlas sergeant said he had the officer who was involved with the perpetrator, identified as Officer Acosta, with him at Bronx River Parkway. The Duty Captain asks Sgt. Triolo if this incident happened at White Plains Road on East 229th Street or East 228th Street. Sgt. Triolo replied that it happened at White Plains Road and East 228th Street but he said he was trying to get a better location. The Duty Captain then gets back on the air and asked if the officer involved, Officer Acosta, was ok. Sgt. Triolo responds that Officer Acosta is not injured. The rest of the communications involves requesting units to various locations and attempts to secure the crime scene.

The Sprint report obtained for this incident is substantially consistent with the above information. It is enclosed in the case file (Enc. 46A-S).

Internal Affairs Closing Report

The Bronx Firearms Investigation Unit’s closing report is enclosed in the case file (Enc. 1A-U). Sergeant Brian Olson, of Patrol Borough Bronx, investigated this case. Sgt. Olson’s report stated, that “although this firearms discharge is justified within the guidelines set forth in New York State Penal Law, the undersigned finds that Police Officer Acosta violated Department Guideline 203-12 in that he discharged his weapon at § 87(2)(b) when the only weapon was the motor vehicle. In addition, Police Officer Acosta used poor tactics reaching in the vehicle which ultimately resulted in being placed in the position that he had to discharge his weapon to avoid being seriously injured or killed.

Therefore the undersigned finds that the firearms discharged by Officer Acosta was a Violation Departmental Guidelines; and recommends that charges and specifications be issued against Police Officer Acosta. In addition, Police Officer Acosta should receive retraining in proper tactics to be utilized when conducting motor vehicle stops.”

The IAB case indicates that there were five “ear” witnesses but none of them saw what happened. None of their names or contact information are enclosed in the case file.

MOS Firearm Information

Officer Acosta’s firearm was checked at the scene by Lt. Jose Bravo of Bronx Atlas. Officer Acosta’s weapon , a 9MM semi-auto Glock 19, serial number DDL348US, contained fourteen (14) rounds in the magazine and one (1) live round chambered in the weapon. Officer Acosta’s weapon contained 9MM Luger Speed +P white casing, white primer, copper jacket hollow point round. Officer Acosta was in possession of both his extra magazines, which were fully loaded with fifteen (15) rounds each of 9MM Luger Speer +P ammunition. According to Lt. Bravo, Officer Acosta’s firearm appeared to have been discharged one time.

Crime Scene Documentation

The Crime Scene unit documentation indicated that photographs were taken of § 87(2)(b) s injury (Enc. 43A-D, 44A, 45A). Doctor Stone who treated § 87(2)(b) said there appeared to be two gunshot wounds to § 87(2)(b) s left thigh. One located on the front § 87(2)(b) s leg and one on the back, both wounds slightly above the knee.

Firearms Discharge Report

The firearms discharge report states, “PO Acosta approached the defendant’s car and observed defendant to have marijuana on his lap. PO Acosta then directed defendant to hand over the marijuana and the defendant refused. PO Acosta then placed his hands on the defendant’s lap where marijuana was and defendant grabbed PO Acosta’s shirt. PO Acosta then saw passenger (separately apprehended § 87(2)(b) reach for something. PO Acosta takes out his weapon, fearing for his physical safety. Defendant then places car in

drive and drives off, while holding onto PO Acosta. PO Acosta's firearm is discharged, striking defendant's knee. Defendant loosens grip on PO Acosta. PO Acosta sees defendant throw out 42 zip locks of crack/cocaine out of car." The report indicates that the type of assault on officer was "Struck by Vehicle." The officer's assignment was: Foot. PO Acosta was alone at the time of the incident and his flashlight was not used. Officer Acosta's firearm was not drawn beforehand and only one shot was fired in order to "Protect self." Officer Acosta was one foot from his target when the round was fired. The report is enclosed (Enc. 47A-E).

Other Police Documents

The ESU run report for truck 3 stated that the crew responded for shots fired. "Upon arrival, male was rear cuffed on pavement passenger side of NY RG § 87(2)(b). Crew assisted EMS with packaging of perp with gunshot wound to (illegible). Removed to § 87(2)(b) via EMS. Crew conducted the search east side East 228th Street White Plains Road west on East 228th Street to Bronx Blvd - Negative results." The report is enclosed (Enc. 57A-B).

The search warrant authorizing the search of § 87(2)(b)'s vehicle is enclosed (Enc. 55A). The Patrol Borough Bronx Task Force roll call is enclosed (Enc. 49A-N). The ESU roll call is enclosed (Enc. 58A-F). Officer Acosta's aided report indicated Officer Acosta was effecting an arrest when he was dragged by car (Enc. 48A-H). Officer Acosta suffered a § 87(2)(b). Officer Acosta's Line of Duty Report is enclosed (Enc. 48A-H). Property vouchers for § 87(2)(b) and § 87(2)(b) are enclosed (Enc. 54A-L).

Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Civil Claim

§ 87(2)(b) filed a Notice of Claim in regards to this incident (Enc. 60A-D). § 87(2)(b) claimed he was unlawfully shot and arrested. He is claiming \$50,000,000 in damages. On April 9, 2009, Bruce Gomez of the New York City Law Department indicated that a 50-h hearing has not been held for § 87(2)(b)'s civil claim as of yet.

CCRB History

Neither § 87(2)(b) nor § 87(2)(b) has any previous complaints on record at the CCRB (Enc. 12A-13A). Officer Acosta has no substantiated complaints on record (Enc. 10A). In case 200610299, Officer Brannigan was substantiated on allegations of a stop, frisk and refusal to provide name and shield number (Enc. 11A-B). The Police Department issued him instructions.

Conclusions and Recommendations

Officer Identification

Police documentation, including the firearms discharge report, noted that Officer Acosta was the officer who first approached and shot § 87(2)(b). § 87(2)(b) stated that Officer Acosta shot him in the leg. During Officer Acosta's CCRB interview, he confirmed his involvement in this incident. § 87(2)(g) § 87(2)(b) and § 87(2)(b) alleged that the officers who stopped them pointed their guns at them and said, "Get the fuck out of the car." Sgt. Triolo, Officer Whitlock and Officer Cotto indicated they pointed their guns at § 87(2)(b) and § 87(2)(b). § 87(2)(g)

Undisputed Facts

On August 16, 2007, § 87(2)(b) parked his vehicle in the vicinity of East 228th Street and White Plains Road. Inside were his friends § 87(2)(b) and § 87(2)(b). Once § 87(2)(b) exited

the vehicle, § 87(2)(b) began rolling a marijuana “blunt.” Officer Acosta approached the vehicle and before saying anything, reached into the vehicle and grabbed § 87(2)(b)’s marijuana. § 87(2)(b) grabbed the marijuana away from Officer Acosta and a struggle ensued. Officer Acosta pointed his gun at § 87(2)(b)’s head. § 87(2)(b) asked Officer Acosta if he was going to shoot him over some “drugs” or a “Dutch.” Officer Acosta fired his firearm one time at § 87(2)(b)’s leg. § 87(2)(b) drove away from the scene with Sgt. Triolo, Officer Cotto and Officer Acosta in pursuit. § 87(2)(b) stopped his vehicle and entered the passenger seat while § 87(2)(b) entered the driver’s seat. The pursuit continued until officers from Bronx Anti-Crime cut § 87(2)(b)’s vehicle off on the Bronx River Parkway. With guns pointed at § 87(2)(b) and § 87(2)(b) the officers ordered them out of the vehicle. § 87(2)(b) was pulled from the vehicle along with § 87(2)(b) and both were handcuffed.

Disputed Facts

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

§ 87(2)(b) denied that he knew Officer Acosta was an officer but § 87(2)(b) stated in both his initial interview and his CCRB interview that § 87(2)(b) said, “Oh shit, the police,” before Officer Acosta reached § 87(2)(b)’s vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

It is undisputed that Officer Acosta reached into § 87(2)(b)’s vehicle to grab the marijuana off § 87(2)(b)’s lap without saying anything first or identifying himself as a police officer. § 87(2)(b) indicated that his bag of marijuana ripped as they were struggling for it. Officer Acosta said that “something” fell to the ground during the struggle. § 87(2)(g) While Officer Acosta described a prolonged struggle with § 87(2)(b) § 87(2)(b) said their struggle lasted seconds and ceased once Officer Acosta pointed his gun at § 87(2)(b) § 87(2)(b) and § 87(2)(b) both indicated that Officer Acosta fired his gun before they began driving away. § 87(2)(b) indicated in his handwritten statement that § 87(2)(b) grabbed the gear shift on the steering wheel right before Officer Acosta fired his weapon, indicating that § 87(2)(b) was likely trying to drive away before Officer Acosta fired his weapon. Officer Acosta explained that § 87(2)(b) held on to his shoulder and chest area with his left hand and began driving away. Officer Acosta indicated that he began running with the vehicle but could not keep up, so he reached into the vehicle and discharged one round into § 87(2)(b)’s thigh. Officer Acosta said he did not really know what he was shooting at but simply discharged his firearm in the hopes of striking § 87(2)(b) somewhere on his body.

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Officer Acosta said during his initial interview with Patrol Borough Firearms Investigations Unit that he actually grabbed § 87(2)(b)'s person during the struggle but later in that interview stated that § 87(2)(b) was grabbing him and he did not grab § 87(2)(b) back. In Officer Acosta's CCRB interview he only mentioned grabbing the marijuana. In addition, Officer Acosta was unable to estimate how far he was dragged away from the scene but indicated he ran after the vehicle for approximately fifteen feet after he shot § 87(2)(b). Officer Acosta never fell to the ground. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) indicated that he heard a shot go off, saw § 87(2)(b)'s vehicle drive off and then saw Officer Acosta running after the vehicle with his gun in one hand and his hat or radio in the other. § 87(2)(b)'s testimony indicates that Officer Acosta fired his weapon before § 87(2)(b) began driving. § 87(2)(g)

§ 87(2)(g)

Concerning what occurred during the stop of § 87(2)(b)'s vehicle on the Bronx River Parkway, § 87(2)(b) stated that an officer approached with his gun pointed yelling to "Stop the fucking car

or I'll shoot." The radio communications CD obtained for this incident has different officers yelling, "Get out of the car" and there is no profanity that can be heard. § 87(2)(g)

Concerning the gun pointed allegation, Officer Brannigan and Officer Whitlock stated that § 87(2)(b) was not showing his hands when they ordered him to. Officer Whitlock said he pointed his gun at § 87(2)(b)'s vehicle while Officer Brannigan opened the car door. Sgt. Triolo said he pointed his gun at the car upon arriving on scene as well.

§ 87(2)(g)

Officer Brannigan and Officer Whitlock, the Anti-Crime officers who eventually stopped § 87(2)(b)'s vehicle, § 87(2)(g) Officer Brannigan indicated § 87(2)(b) not only resisted but pushed Officer Brannigan into a nearby lane of traffic, Officer Cotto indicated that both he and Officer Brannigan pulled § 87(2)(b) out, placed him on the ground and then handcuffed him. Officer Whitlock never mentioned that Officer Brannigan was pushed during his initial interview with Patrol Borough Bronx Investigations but then stated during his CCRB interview that Officer Brannigan was pushed.

Officer Cotto's testimony indicated that the only resistance § 87(2)(b) provided was passive in nature. Officer Cotto made no mention of any push of Officer Brannigan. § 87(2)(g)

Both Officer Cotto and Officer Whitlock stated they did not strike § 87(2)(b) in any manner and stated they did not see any other officer strike § 87(2)(b). § 87(2)(b) stated that he was kicked all about his body once on the ground for five to ten minutes. § 87(2)(g)

Officer Brannigan was vague about how many times he punched § 87(2)(b) saying he punched him "approximately" once § 87(2)(g)

§ 87(2)(g)

Pleading of Allegations

§ 87(2)(g)

§ 87(2)(g)

Allegation A) Force: At East 228th Street and White Plains Road in the Bronx, PO Daniel Acosta fired his gun at § 87(2)(b)

On August 16, 2007, § 87(2)(b) parked his vehicle on the corner of East 228th Street and White Plains Road. Shortly thereafter, Officer Acosta reached inside § 87(2)(b)'s window to grab a bag of marijuana in § 87(2)(b)'s possession. Officer Acosta did not announce he was a police officer and § 87(2)(b) stated that he did not know Officer Acosta was a police officer at the time. A struggle over the bag of marijuana then ensued. § 87(2)(b) indicated that Officer Acosta reached into the vehicle with a gun and pointed it at him. § 87(2)(b) then asked Officer Acosta, "You gonna shoot me for this? This little bit of weed, you gonna shoot me for weed?" Officer Acosta substantially corroborates § 87(2)(b)'s account up until that point, saying that he placed his gun against § 87(2)(b)'s left temple and told him, "If you take me with this vehicle down the street, I'm going to kill you," to which § 87(2)(b) replied, "What you going to do, shoot me over a Dutch?"

§ 87(2)(g) § 87(2) indicated that immediately after he asked Officer Acosta if he was going to shoot him over "some weed" Officer Acosta shot him in his left thigh, prompting § 87(2)(b) to drive away from the scene out fear of being shot again. Officer Acosta stated that § 87(2)(b) grabbed his shoulder and began driving away, thereby dragging Officer Acosta. Officer Acosta then discharged his firearm, striking § 87(2)(b) on his left thigh. The bullet shattered § 87(2)(b)'s thigh bone and produced an exit wound under his left thigh.

§ 87(2)(g) § 87(2)(b) had not threatened Officer Acosta with a firearm, knife or any other weapon. As noted in the Internal Affairs investigation, Officer Acosta violated NYPD Patrol Guide Procedure 203-12 which states, "Police officers shall not discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the police officer or another person present, by means other than a moving vehicle" (NYPD PG 203-12, Enc. 2A). § 87(2)(g)

Allegation B) Force: At East 233rd Street and Bronx River Parkway North in the Bronx, officers pointed their guns at § 87(2)(b) and § 87(2)(b)

§ 87(2)(g) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)

Allegation C) Discourtesy: At East 233rd Street and Bronx River Parkway North in the Bronx, officers spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged an officer said, "Stop the fucking car or I'll shoot" as he pointed his gun at § 87(2)(b). The communications CD from this incident catches aspects of this incident and two different officers can be heard yelling, "Get out of the car" multiple times. § 87(2)(g)

§ 87(2)(b) In DCT trial PD v. Court, the administrative law judge wrote that, "when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct" (Enc. 3A-J). § 87(2)(g)

Allegation D) Force: At East 233rd Street and Bronx River Parkway North in the Bronx, PO Brian Brannigan used physical force against § 87(2)(b)

Allegation E) Force: At East 233rd Street and Bronx River Parkway North in the Bronx, officers used physical force against § 87(2)(b)

Officer Brannigan and Officer Whitlock indicated that § 87(2)(b) refused to be pulled out of the car but once they got § 87(2)(b) out he allegedly pushed Officer Brannigan. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) The Police Student's Guide's Scale of Escalating Force indicates that the appropriate level of force for minor physical resistance such as a suspect grappling, going limp, pulling or pushing away would be the use of compliance techniques by the officer such as wrestling holds or grips designed to overpower the subject. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that once he was pulled out of the vehicle, officers began kicking him about his body for five to ten minutes. § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: